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EX PARTE COMMENTS

By Electronic Filing

October 27, 2008

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *In the Matter of Universal Service Contribution Methodology*, WC Docket No. 06-122; *IP-Enabled Services*, WC Docket No. 04-36; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45

Dear Secretary Dortch:

The Massachusetts Department of Telecommunications and Cable ("MDTC")¹ respectfully submits this ex parte communication in response to recent industry reports that the Federal Communications Commission ("FCC") will vote on an order at its November 4, 2008 public meeting on comprehensive intercarrier compensation and universal service funding reform. Those reports indicate that the order will classify facilities-based or fixed voice over internet protocol ("VoIP") services as deregulated information services. As a result, the MDTC would like to express its deep concern that such a ruling would cause irreparable harm to consumers in Massachusetts and strongly urges the FCC to not make such a finding either as part of a comprehensive reform order or as part an order addressing its legal authority for the interim rules issued in the *ISP Remand Order*.²

¹ The MDTC is the exclusive state regulator of telecommunications and cable services within the Commonwealth of Massachusetts. Mass. Gen. Laws c. 25C § 1.

² *In re Core Communications, Inc.*, 531 F.3d 849 (D.C. Cir. 2008).

On October 23, 2008, the MDTC first learned that the FCC intends to classify VoIP services, including facilities-based or fixed VoIP, as an “information service”, thereby making it an unregulated service under exclusive federal jurisdiction.³ See *In the Matter of Petition for Declaratory Ruling that Pulver.Com’s Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, 19 FCCR 3307 ¶¶ 2, 8 (February 19, 2004) (holding “Internet application” at issue to be “an unregulated information service subject to federal jurisdiction). Since the FCC’s longstanding policy has been to leave information services wholly unregulated, FCC classification of fixed VoIP as an information service would mean that fixed VoIP service would not be subject to any federal or state regulation. *Id.* at ¶ 15 (stating “[w]e determine, consistent with our precedent regarding information services, that [the service at issue] is an unregulated information service and any state regulations that seek to treat [the service] as a telecommunications service or otherwise subject it to public-utility type regulation would almost certainly pose a conflict with our policy of nonregulation”).

The MDTC strongly opposes any action to classify fixed VoIP as an information service for two primary reasons: (1) in light of the telecommunications industry’s current transition from traditional circuit-switched technology to fixed VoIP technology, the proposed classification would preempt state regulation of nearly all residential telecommunications services in Massachusetts without any other regulation to fill the void; and (2) without regulatory authority over fixed VoIP, the MDTC will have no ability to ensure that residential telecommunications customers continue to receive the benefit of essential consumer protections that they have had when their telecommunications service used traditional circuit-switched technology.

The telecommunications industry is transitioning from traditional, circuit-switched technology to Internet-based, VoIP technology at a rapid pace. Already, over 11 million households use VoIP service (nomadic or fixed) nationwide. By 2011, over 23 million households are projected to have VoIP service.⁴ In Massachusetts, fixed VoIP telephone service is now offered by one or more cable companies in 288 communities, representing nearly 97% of the state’s population. In addition, Verizon, the largest provider of telecommunications services in the Commonwealth, is actively rebuilding its network to replace copper wires with fiber-optic lines (under the trade name “FiOS”), and is widely expected to adopt fixed VoIP technology on its FiOS network, which already serves more than 80 communities, in the near future.⁵ If fixed VoIP were classified as an information service, there would be no federal or state regulation of the type of telephone service that will be used by nearly the entire population of Massachusetts in the future. Moreover, there are 44 rural communities in Massachusetts that have only one residential landline telecommunications provider. In addition, a large number of these rural communities lack broadband, and wireless coverage is either not available or often poor due to

³ This further demonstrates the fundamental unfairness of the process that the FCC is using in an effort to rush through comprehensive industry reform. See NECPUC Ex Parte, CC Docket No. 01-92, WC Docket No. 06-122, WC Docket No. 04-36, CC Docket No. 96-45 (filed October 17, 2008).

⁴ See TeleGeography Research Service, <http://www.telegeography.com/wordpress/?p=59>.

⁵ See, e.g., Joan Engebretson, “Voice’s Place in the Fiber Future,” http://www.broadbandtrends.com/News_Articles/Articles_2007/May_2007/Telephony_05212007.htm, May 21, 2007.

the mountainous and tree-lined topography. In areas such as these communities, which represent large regions of Massachusetts, inter-modal telecommunications competition, which would serve to limit the power of a monopoly provider, simply does not exist. Accordingly, if the FCC were to classify fixed VoIP as an “information service,” these rural communities would be served by an unregulated monopoly provider that would face no competitive pressures.

Without any regulation, consumers would lose core consumer protections that safeguard them against inadequate service and unreasonable practices.⁶ These issues disproportionately affect the most vulnerable segments of the population, including those who are disabled, poor, sick or elderly. Consumers of fixed telephone service are typically not aware of the technical differences between fixed VoIP and traditional circuit-switching, and they rightfully expect that both services will provide them with equivalent consumer protections. However, classification of fixed VoIP as an information service would preempt state regulators from extending the same consumer protections currently applicable to circuit-switched customers to fixed VoIP customers. Thus, the MDTC stresses the dramatic consequences of classification of fixed VoIP as an information service and the resulting deregulation of the vast majority of residential telecommunications services.

For the reasons stated above, the Commission should not classify fixed VoIP as an information service, or in any manner that would preempt state regulation, either as part of a comprehensive reform order or as part an order addressing its legal authority for the interim rules issued in the *ISP Remand Order*. Such an action would have far-reaching and harmful consequences for residential telephone customers. The FCC should instead more fully examine these extremely important issues pursuant to a process that allows for notice and comment from all interested parties.

Sincerely,

_____/s/
Sharon E. Gillett, Commissioner
Massachusetts Dept. of
Telecommunications and Cable

⁶ For illustrative purposes, these protections safeguard consumers against inadequate service and unreasonable practices including (1) unjustified payments or disconnection over legitimate billing disputes; (2) extended service outages that can be life-threatening for sick and elderly citizens and can jeopardize the very survival of small and medium-sized businesses that depend on telecommunications services to function; (3) disruption to or poor quality E911 service; (4) the conscious attempt to force consumers of low and moderate means off the network altogether; (5) fraud and other unscrupulous behavior; and (6) poor quality telephone service.